

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'G': NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3118/Del/2016  
(Assessment Year: 2010-11)**

Dy. Commissioner of Income Tax, Circle 6(1), New Delhi.	Vs.	M/s Citi Financial Consumer Finance India Ltd.
<b>PAN No: AABCA3223B</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Shri S.S. Rana, CIT(DR)  
**Assessee by** : Shri Gaurav Gupta, Adv.

**ORDER**

**Per Anadee Nath Misshra , AM**

This appeal by Revenue has been directed against the order of Learned Commissioner of Income Tax (Appeals)-2, [Ld. CIT(A)', for short] New Delhi, dated 17.02.2016 for Assessment Year 2010-11, on the following grounds:

"1. On the basis of facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 27,09,62,459/- on account of disallowance of Loan Acquisition Cost ignoring the facts that these expenses have a direct bearing in relation to the loan amounts and the period of the loan, hence the loan acquisition fee cannot be held relevant exclusively for the current year and same has to be spread over the period of the loan.

2. On the basis of facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 9,59,60,937/- on account of disallowance of 4/5<sup>th</sup> of

*Non Convertible Debentures (NCD) and Commercial Paper issue expense ignoring the facts that the Non Convertible Debenture (NCD) and Commercial Paper issue expenditure incurred cannot be held relevant exclusively for the current year.*

*3. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

(2) Assessment Order dated 11.03.2014 was passed U/s 143(3) of Income Tax Act, 1961 ("IT Act", for short) by the Assessing Officer ("AO", for short), wherein additions amounting to Rs. 27,09,62,459/- (on account of loans acquisition cost) and Rs. 9,59,60,937/- (on account of NCD & commercial paper issue expenses) were made an assessment was completed at the loss of Rs. 1,98,80,03,447/-. The assessee filed appeal against the Assessment Order, before Ld. CIT(A), who, vide appellate order dated 17.02.2016 deleted both the additions. For deleting the aforesaid addition of Rs. 27,09,62,459/- she relied on the order of Income Tax Appellate Tribunal ("ITAT", for short) in assessee's own case for Assessment Year 2006-07 in ITA No. 4776/Del/2010, her finding is recorded in paragraph no. 3.2.1 to 3.2.3 of her aforesaid order dated 17.02.2016, which is reproduced as under:

**"3.2.1 I have carefully considered** the submissions of the A/R of the appellant company, the facts of the case as well as the findings of the A.O. **Grounds nos. 2, 2.1 & 2.2 of the appeal** are directed against the disallowance of 2/3<sup>rd</sup> of expenditure claimed on 'loan acquisition cost' amounting to Rs. 27,09,62,459/-. The AO in the assessment proceedings observed that during the FY under consideration the appellant had incurred loan acquisition cost of Rs. 40,64,43,689/-. The AO further noticed that loan acquisition fee pertains to the processing of the loan and was of the view that it has to be spread over the tenure of the loan period. He relied upon the decision of Hon'ble Supreme Court in the case of *Madras Industrial Investment Corporation Ltd. v. CIT (255 ITR 802)* where it was held that the

allowability of the expenditure depends entirely on the nature of the expense and stated that allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. In view of the above mentioned facts and judicial decisions, the AO held that the loan acquisition fee expenses needs to be spread over a period of three years and accordingly allowed 1/3<sup>rd</sup> of the total loan acquisition fee of Rs. 40,64,43,689/-, amounting to Rs. 13,54,81,230/-, and disallowed the balance amount of Rs. 27,09,62,459/-, during the year, holding it to be allowable in the next two years.

**3.2.2** Similar addition was also made in the case of the appellant which was held allowed by the Hon'ble ITAT in its decision dated 20.04.2012 vide ITA Nos. 3144, 3145 & 5514/Del/2010 for A.Ys. 2003-04 to 2005-06 as under:-

*"26. Ground no.4 in the appeal of the Revenue for the AY 2003-04 and ground no.3 in their appeals for the A Ys 2004-05 and 2005-06 relate to expenditure incurred in connection with advancing of loan to customers. The AO. during the course of assessment proceedings for the AY 2003-04, noticed that the assessee company claimed loan acquisition cost of "13,03,15,460/- as revenue expenditure and changed the accounting policy for accounting of loan acquisition fee and claimed the same on amortization basis. Total loan acquisition cost incurred during the year was "13,03,15,460/- and amount shown in the profit and loss account was "7,44,16,728/- whereas in the computation of income , the assessee claimed entire loan acquisition cost as deductible expenses. To a query by the AO, the assessee explained that in course of its money lending business, the assessee entered into loan agreements and hire purchase agreements with its customers and incurred cost such as credit verification of the borrower, front end processing fee etc.. These costs were booked as loan acquisition costs and were recognized as expenses over the tenor of the loan by applying the Internal Rate of return (IRR), implicit in 43 ITA nos. 3144&3145,5514 &5191,2687&2688/Del./2010 the agreement on the diminishing balance of the financed amount so as to provide a constant periodic rate of return on the net investment outstanding on the contract. However, in case, the loan was foreclosed, the unamortized portion of the loan acquisition cost, being disclosed as part of loans and advances, was recognized as charge to the profit and loss account at the time of foreclosure. However, w.e.f April, 2002, the assessee company changed its policy for accounting of loan acquisition costs. The loan acquisition costs were earlier charged to the profit and loss account as and when incurred. In the year under consideration, in accordance with the changed accounting policy , the company amortized a part of the loan acquisition cost incurred during the year while the unamortized portion of "55,899/- thousands was shown under loans and advances in the schedule 10 of the financials. However, in the return, the assessee claimed an amount of "55,898,732/- being the unamortized amount of the loan acquisition fee actually incurred during the year, a practice of claiming the loan acquisition cost on actual basis being consistently followed by the assessee over the years and never questioned by the department, the assessee*

clarified. However, the AO did not accept the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs. CIT,225 ITR 802(SC) and allowed only 1/3rd of the expenditure and disallowed an amount of '8,68, 76,973/-.

26.1 Similarly, the AO allowed only 1/3rd expenditure and disallowed "11,38,85,144/- out of total of "17,08,28,717/- in the AY 2004-05 and allowed only "14,33,75,323/- and disallowed remaining "28,67,50,647/- out of total expenditure of "43,01,25,970/- in the AY2005-06.

27. On appeal, the Id. CIT(A) allowed the claim of the assessee in the AYs 2003-04 and 2004-05, holding as under:

"12. I have gone through the submissions given by the appellant and have examined the matter in details. The appellant has deferred both loan acquisition costs and loan processing fees in the books of accounts because of the accounting policy followed by the 44 ITA nos. 3144&3145,5514 &5191,2687&2688/Del./2010 appellant. However for tax purposes, it has offered loan processing fees (Income) for tax and has claimed loan acquisition costs as expense in the year of accrual. The Assessing Officer has accepted the taxation of loan processing fees as income on upfront basis but at the same time has allowed loan acquisition costs on a deferred basis over a period of three years. This treatment by Assessing Officer is inconsistent. The Assessing Officer cannot take a different stand relating to income and expenditure on the same issue. It is also a well settled principle that treatment in books of accounts does not govern the tax treatment as the same is governed by the provisions of the Income-tax Act. Accordingly, loan acquisition costs are allowable in full in the year in which the same were incurred and cannot be spread over number of years. The disallowance made by the Assessing Officer in assessment orders amounting to "8,68,76,973/- for assessment year 2003- 04 and "11,38,85,144/- for assessment year 2004-05 are, accordingly, deleted. "

27.1 Following the view in the aforesaid decision, the Id. CIT(A) allowed the claim for the A Y 2005-06 in the following terms:

"16. Judicial precedents demands that the order of my Id. Predecessor has to be followed by me unless there is change in facts or in position of law. I do not see any change in facts or in law. Thus, decision in ground of appeal No. 4 and its part would have to go to the assessee. While, dissecting this ground of appeal, I observe that the assessee has been taking the stand that in assessment year 2001-02 and 2002-03, the IT AT has issued an order in its favour. On a close perusal of the said order, I do not see any such adjudication. In any case, I have already decided in favour of the assessee in ground of appeal No. 4 and its parts."

28. *The Revenue is now in appeal before us against the aforesaid findings of the Id. CIT(A). The Id. DR relied on the order of the AO while the Id. AR on behalf of the assessee supported the findings of the Id. CIT(A) .*

29. *We have heard both the parties and gone through the facts of the case. Indisputably, the assessee offered loan processing fees (Income) for tax and claimed loan acquisition costs as expense in the year of accrual in accordance with, a practice being consistently followed by the assessee over the years and never questioned by the Revenue. However, the AO did not accept 45 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited(supra) . On appeal , the Id. CIT(A) allowed the claim on the ground that the AO could not take a different stand relating to income and expenditure on the same issue and the treatment in books of accounts does not govern the tax treatment, which is governed by the provisions of the Act. As already observed by us in para 25 to 25. 7 while adjudicating ground no. 3 in the appeal of the Revenue for the AY 2003-04 and ground no.7 in their appeal for the AY 2005-06 ,the concept of deferred revenue expenditure is essentially an accounting concept and alien to the Act. The relevant provisions of the Act recognise only capital or revenue expenditure. Indisputably, the amount claimed by the assessee in these three assessment years is revenue in nature. Deferred revenue expenditure denotes expenditure for which a payment has been made or a liability incurred, which is essentially revenue in nature but which for various reasons like quantum and period of expected future benefit etc., is written-off over a period of time e.g. expenditure on advertisement, sales promotion etc.. There is no material before us to infer that the aforesaid expenditure resulted in creation of any capital asset, tangible or intangible, and thus, the question of treating the same as capital expenditure does not arise. In fact, the Hon'ble Supreme Court itself in Madras Industrial Investment Corporation Limited(supra) while discussing the issue, in the said case, and distinguishing between various situations observed that*

*"ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years".*

29.1. *In view of detailed reasons given in para 25 to 25.7 above, especially when the Revenue have not brought to our notice any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the Id. CIT(A). Therefore, ground no. 4 46 ITA nos. 3144&3145,5514 &5191,2687&2688/Del./2010 in the appeal of the Revenue for the AY 2003-04 and ground no. 3 in their appeals for the AYs 2004-05 and 2005-06, are dismissed. "*

3.2.3. By following the above decision of the Hon'ble ITAT, similar disallowance was also held deleted by Hon'ble ITAT vide their order of February, 2015 in the case of the appellant for the A.Y. 2006-07 in ITA No. 4776/Del/2010. As the facts and circumstances in the appeal under consideration are similar therefore, by following the findings of Hon'ble ITAT as discussed above, the disallowance made by the A.O. is held deleted. These grounds of appeal nos. 2, 2.1 & 2.2 are allowed.”

(2.1) For deleting the aforesaid addition of Rs. 9,59,60,937/-, the Ld. CIT(A) relied on the order of Co-ordinate Bench of ITAT, Delhi in assessee's own case for Assessment Year 2006-07 in ITA No.- 4776/Del/2010. Her findings recorded in her aforesaid order dated 17.02.2016, are reproduced as under:

*"4.2.1 Grounds nos. 3, 3.1, 3.2 & 3.3 of the appeal are directed against disallowance of 4/5<sup>th</sup> of the expenditure amounting to Rs. 9,59,60,937/- under the head Non Convertible Debentures ('NCD') and Commercial Paper ('CP'). During the year under consideration the appellant has claimed expense towards issue of Non Convertible Debentures ('NCD') and Commercial Paper ('CP') of Rs. 11,99,51,171/- and claimed the same in full in the computation of income. The AO was of the view that the said expenditure should be spread over a period of five years and accordingly allowed 1/5<sup>th</sup> of the same amounting to Rs. 2,39,90,234/- holding the balance amount of Rs. 9,59,60,937/- allowable in the next four years.*

*4.2.2. Similar addition was also made in the case of the appellant which was deleted by the Hon'ble ITAT in its decision dated 20.04.2012 vide ITA Nos. 3144/D/2010 for A.Y. 2003-04 and 5514/D/2010 for A.Y. 2005-06 as under:-*

*"22. Next ground no. 3 in the appeal of the Revenue in the AY 2003-04 and ground no. 7 in their appeal for the A Y 2005-06 relate to expenditure in relation to issue of non convertible debentures and commercial paper. During the course of assessment year proceedings for the AY 2003-04, the AO noticed that the assessee claimed expenditure towards non convertible debentures (NCD) and commercial paper issue expenses of "2,03,54,103/- in the computation of income even when the same was treated as deferred revenue expenses in the accounts. To a query by the AO, the assessee replied that there is no concept of deferred revenue expenditure under the Act and that the . income under business or profession has to be computed as per sections 28 to 43 of the Act. Accordingly, the assessee pleaded that the claim be allowed in full as revenue expenditure. However, the AO did not accept the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited Vs.*

CIT,225 ITR 802(SC) and allowed only 1/5th of the expenditure, resulting in disallowance of 7,62,83,282/-.

22.1 Similarly, in the AY 2005-06, the AO allowed only 1/5th expenditure and disallowed an amount of '2,70,72,940/- out of total claim of '3.38,41,175/-.

23. On appeal, the assessee contended that the NCD and CP issue expenses included the expenditure towards payment of stamp duty, payment made to credit rating agencies, underwriters, managers and bankers to the issue. While relying upon the decision of Hon'ble Supreme Court in the case of India Cements Ltd. Vs. CIT, 60 ITR 52 and circular no. 56 dated 19.3.1971 issued by the CBDT, it was contended that expenditure is revenue in nature. Inter alia, the assessee relied upon decisions in CIT Vs. East India Hotels, 252 ITR 860 (Cal); CIT Vs. Mahindra UGINE and Steel Co. Ltd., 250 ITR 84 (Bom), Premier Automobiles Ltd. Vs. CIT 80 ITR 415 (Bom); CIT Vs. OL: 218 CTR 165 (Guj); CIT Vs. South India Corpn. (Agencies) Ltd., 290 ITR 217 (Mad) and CIT Vs. First Leasing Co. of India Ltd., 304 ITR 67 (Mad). It was further pointed out that deferment of issue expenses in the books would not lead to the conclusion that the expenditure is not revenue in nature. In support, the assessee relied upon the decisions in Kedarnath Jute Mfg. Co. Ltd. Vs. CIT (Central)(1971), 82 ITR 363(SC); Sutlej cotton Mills Ltd. Vs. CIT 116 ITR (SC); and CIT Vs. Messrs. Shoorji Vallabhdas and Co. 46 ITR 144. In the light of these submissions, the Id. CIT(A) allowed the claim of the assessee in the AY 2003-04, holding as under:

"10. I have gone through appellant's submission and judicial rulings cited by the appellant in this regard. The appellant's case is squarely covered by the decision of the Humble Supreme Court in the case of India Cements (supra) and Hon'ble Delhi High Court's decision in the case of Thirani Chemicals. Accordingly, the expenditure on issue of NCD and CP is allowable in full in the year in which the same were incurred and cannot be spread over a number of years. The disallowance made by the Assessing Officer in assessment order amounting to "1,62,83,282/- for assessment year 2003-04 is, therefore, deleted."

23.1 Similarly, in the AY 2005-06, the Id. CIT(A) allowed the claim in the following terms:

"38. I have gone through the order of the learned Assessing Officer and the submissions made by the learned AR of the assessee. There is no doubt that the non convertible debentures (NCD) and the commercial papers (CP) were loans. In other words, the loan was not an asset and when a company borrows money to such financial instruments the expenses in connection with the borrowings are allowable as revenue expenditure. While it cannot be disputed that the decision in India Cements Ltd. (supra) was rendered in the backdrop of 1922 Act, the expenses if any under any circumstances cannot be taken as an asset which would justify the expenditure as capital in nature. The assessee had merely made use of the provisions of section 78 of the Companies Act. the manner in which entries were made in the books of accounts cannot control or decide the question of allowability of the claim in the I. T. assessment and this position is so well settled that it needs no citings of any authority. Thus,

*the reliance on expenses relating to the issue of NCDs and CPs would have to be taken as loan which is not an asset. Thus, the expenditure would have to be construed as revenue in nature. The assessee succeeds in ground of appeal No. 10 and its part. "*

24. *The Revenue is now in appeal before us against the aforesaid findings of the Ld. CIT(A).The Id. DR supported the orders of the AO while the Id. AR on behalf of the assessee relied upon the findings of the Id. CIT(A).*

25. *We have heard both the parties and gone through the facts of the case. Indisputably, the aforesaid amount relates to expenditure in connection with the issue of non convertible debentures and commercial paper . The AO treated the same as deferred expenditure while the Id. CIT(A) allowed the claim in the light of decision in India Cements Ltd. (supra). It is well established that the concept of deferred revenue expenditure is essentially an accounting concept and alien to the Act. The relevant provisions of the Act recognise only capital or revenue expenditure. Deferred revenue expenditure denotes expenditure for which a payment has been made or a liability incurred, which is essentially revenue in nature but which for various reasons like quantum and period of expected future benefit etc., is written-off over a period of time e.g. expenditure on advertisement, sales promotion etc.. Though the nature of such expenditure is revenue, keeping in view the fact that the benefits arising therefrom are expected 39 ITA nos. 3144&3145,5514 &5191,2687&2688/Del./2010 to be derived over a period of time, stretching sometimes over several accounting years, that taxpayers have been amortising the same over the expected time period over which the benefits are likely to accrue there from. Accordingly, only a proportion of such expenditure is amortised in the Profit and Loss Account but an appropriate adjustment is made in the computation of income, claiming the entire as allowable revenue expenditure in terms of provisions of section 37(1) of the Act. The expenditure which i treated as deferred revenue in the books almost in all cases comprises of items, the benefits derived wherefrom are ephemeral and transitory in nature in as much as these are incurred as a part of a continuous process and need to be expended in order i generate and increase the brand recall and sustain it in the minds of customer Whether or not expenditure is of enduring nature, the Hon'ble Supreme Court in tl case of Alembic Chemical Works Co. Ltd. vs. CIT (1989) 177 ITR 377 has itself observed that*

*"The idea of "once for all" payment and "enduring benefit" are not to be treated something akin to statutory conditions ; nor are the notions of "capital" or "revenue judicial fetish. What is capital expenditure and what is revenue are not eternal verities but must needs be flexible so as to respond to the changing economic realities business. The expression "asset or advantage of an enduring nature" was evolved emphasise the element of a sufficient degree of durability appropriate to the context.*

25.1. *Moreover, the deferred revenue expenditure is essentially revenue in nature and the decision to treat the same as deferred revenue only represents a management decision taken in view of the magnitude of the expenditure involved. For the purpose of allowability of any expenditure under the Act, what is material is the classification between the capital and revenue and the same does not recognise of any concept of deferred revenue expenditure. That is why AO himself allowed the 1/5th of the amount.. In a number of judgments viz. Amar Raja Batteries Ltd. v. ACIT [(2004) 91 1TD 280 (Hyd)], JCIT v. Modi Olivetti Ltd. [(2005)4 SOT 859 (Delhi)], ACIT vs. Medicamen Biotech Ltd. [(2005) 1 SOT 347 (Delhi)],Hero Honda Motors Ltd. v. Joint Commissioner of Income Tax [(2005) 3 SOT 572 (Delhi)] ;Charak Pharmaceuticals v. JCIT [(2005) 4SOT 393 40 ITA nos. 3144&3145,5514*

&5191,2687&2688/Del./2010 (Mumbai)], and ACIT vs. Ashima Syntex Ltd., 117 ITD 1 (Ahd.)(SB) it has been affirmed that where any expenditure is treated as a deferred revenue expenditure, it presupposes that the concerned expenditure, creating benefit is in the revenue field and is a revenue expenditure, but considering its enduring benefits as well as the fact that it does not result in the creation of any new asset or advantage of enduring nature in the capital field, the same is required to be treated distinctly from capital expenditure. However, where any identifiable capital asset, tangible or intangible comes into existence as a result of the amount expended, the same will have to be treated as a capital expenditure and depreciation allowable thereon as per the prescribed rules and procedures under the Income-tax Act.

25.2. In the instant case, there is no material before us to infer that the aforesaid expenditure resulted in creation of any capital asset, tangible or intangible, and thus, the question of treating the same as capital expenditure does not arise. In fact, the Hon'ble Supreme Court itself in Madras Industrial Investment Corporation Limited (supra) while discussing the issue, in the said case, and distinguishing between various situations observed that

"ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years".

25.3 Another argument by the Id. DR is the variation and dichotomy between the accounting treatment of such expenditure in the books of account and its claim under the Act. As far as the entries in the books of account are concerned, it is well settled that they do not clinch the issue either way, and are not determinative of the allowability or otherwise of the expenditure. The decisions of the Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971 ] 82 ITR 363 and in the case of CIT v. Indian Discounts Co. Ltd. [1970] 75 ITR 191 (SC) are clear on the issue. The accounting entries in the books of accounts are occasioned by a diverse set of considerations and issues such as 41 ITA nos. 3144&3145,5514 &5191,2687&2688/Del./2010 compliance with statutory laws and mandatory accounting standards/principles and of course management decisions as to the treatment of a particular item which can be guided by considerations of reported profitability earning per share, impact on share prices etc.. The Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. vs. CIT (1971) 82 ITR 363 (SC) also affirmed the above view by observing that

"whether the **assessee** is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his right nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter".

25.4 Subsequently the Hon'ble Court re-affirmed the said view in Sulej Cotton Mills. Ltd. Vs. CIT 116 ITR 1 (SC)

"But it is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is necessary to be considered is the true nature

*of the transaction and whether in fact it has resulted in profit or loss to the assessee. "*

25.5 *Likewise, in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd vs. CIT,227 ITR 172(SC),Hon'ble Supreme Court held that*

*"It is true that this court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override section 56 or any other provision of the Act as was pointed out by Lord Russell in the case of B. S. C. Footwear Ltd. [1970] 77 ITR 85 7, 860 (CA), the income tax law does not march step by step in the footprints of the accountancy profession."*

25.6 *In a later decision in CIT vs Secure Meters Ltd., (2009 TIOL 93)(SC),Hon'ble Apex court taking note of their earlier decision in India Cements 42 ITA nos.3144&3145,5514 &5191,2687&2688/Del./2010 Ltd.(supra) held that expenditure on loan was allowable as revenue expenditure. The Revenue in this case contended that since the debentures were convertible and on conversion, it would add to the capital of the company, the expenditure should also be construed as capital expenditure. The Hon'ble Supreme Court rejected this contention and held that the debentures were loans and the object of a loan was not relevant. Accordingly, it was concluded that expenses on issue of debentures, whether convertible or not, is allowable as a deduction in computing the income of the assessee.*

25.7 *In view of the foregoing, especially when the Revenue have not brought to our notice any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the Id. CIT (A). Therefore, ground no. 3 in the appeal of the Revenue for the AY 2003-04 and ground no. 7 in their appeal for the AY 2005-06 are dismissed.*

*4.2.3 Deletion of similar disallowance by the first appellate authority has also been upheld by the Hon'ble ITAT vide para 39 of their order ITA No. 4776/Del/2010 dated February, 2015 for A.Y. 2006-07. There being no change in the facts of the case, by following the findings of the Hon'ble ITAT as discussed above, the disallowance made by the A.O. is hereby deleted. Grounds nos. 3, 3.1, 3.2 & 3.3. of appeal are allowed."*

(3) The present appeal before us, has been filed by Revenue against the aforesaid impugned order dated 17.02.2016 of Ld. CIT(A). In the course of appellate proceedings

in ITAT, the assessee filed **Paper Book** consisting of the following particulars:

1.	<i>Copy of computation of Income for the AY 2010-11, along with the notes to the computation of income</i>
2.	<i>Copy of Audited Financial Statements for the year ending 31<sup>st</sup> March 2010</i>
3.	<i>Copy of Tax Audit Report u/s 44AB of the Income-tax Act ('the Act') for the AY 2010-11 dated 15 September 2011</i>
4.	<i>Copy of submissions filed before Commissioner of Income-tax (Appeals), New Delhi ['CIT(A)'] dated 8 July, 2015</i>
5.	<i>Copy of International Accounting Standard FAS-91</i>
6.	<i>Copy of guidelines for issue of Commercial Papers issued by RBI</i>
7.	<i>Copy of order of the ITAT, Delhi for AY 2009-10-ITO v M/s Citi Financial Consumer Finance (I) Ltd.</i>
8.	<i>Copy of the order of the Delhi High Court for AYs 2007-08 and AY 2008-09 Pr. CIT v Citi Financial Consumer Finance India Ltd.</i>
9.	<i>Copy of the order of the ITAT, Delhi for AYs 2007-08 and 2008-09 DCIT v M/s City Financial Consumer Finance (I) Ltd.</i>
10.	<i>Copy of the order of the Delhi High Court for AY 2006-07 Pr. CIT v Citi Financial Consumer Finance India Ltd.</i>
11.	<i>Copy of order of the ITAT, Delhi for AY 2006-07 DCIT v M/s City Financial Consumer Finance (I) Ltd.</i>
12.	<i>Copy of the order of the ITAT, Delhi for AYs 2003-04, 2004-05 and 2005-06 DCIT v M/s City Financial Consumer Finance (I) Ltd.</i>

(3.1) Moreover, the written submissions were also filed from assessee's side, relevant portion of which is reproduced as under:

### **"1. Background**

**1.1 Citi Financial Consumer Finance India Ltd., now known as Citicorp Finance India Ltd.** (hereinafter referred to as "**Assessee**") is a Non-Banking Financial Company. During the relevant assessment year, it was engaged in the business of providing finance to customers for personal loans and mortgage, i.e., home loan and home equity.

1.2 For the relevant assessment year, the Assessee filed its revised return declaring the loss of **Rs 2,35,49,26,843**. However, the assessing officer assessed the total income of the Assessee at loss of Rs. 1,98,80,03,447, after making following disallowances of:

<b>Particulars</b>	<b>Amount (Rs.)</b>
Loan acquisition cost	27,09,62,459
Expenses in relation to non-convertible debentures and	9,59,60,937

1.3 These additions were challenged by the Assessee, in appeal before the Commissioner of Income Tax (Appeals) ('CIT(A)').

1.4 The CIT(A) by its order dated February 17, 2016, following the order of Hon'ble ITAT in the Assessee's own case in earlier assessment years, deleted the aforesaid additions.

1.5 Now the department is in appeal before this Hon'ble Tribunal on the following two grounds of appeal:

1. On the basis of facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the additions of Rs. 27,09,62,459 on account of Disallowance of Loan Acquisition Cost ignoring the facts that the expenses have a direct bearing in relation to the loan amounts and the period of the loan, hence the loan acquisition fee cannot be held relevant exclusively for the current year and same has to be spread over the period of the loan.

2. On the basis of facts and circumstances of the case the Ld. CIT(A) has erred in deleting the additions of Rs 9,59,60,937, on account of disallowances of 4/5<sup>th</sup> of Non Convertible Debentures (NCD) and Commercial Paper issue expenses ignoring the facts that the Non Convertible Debentures (NCD) and Commercial Paper issue expenditure incurred cannot be held relevant exclusive for the current year.

3. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any grounds of appeal at the time before or during the hearing of this appeal.*

## 2. ASSESSEE'S SUBMISSIONS AGAINST REVENUE'S GROUNDS OF APPEALS

2.1 *At the outset it is submitted that the aforesaid grounds of appeal are squarely covered by the orders of Hon'ble Tribunal from the AYs 2003-04 to 2009-10, in Assessee's own case.*

2.2 *Further, our submission in relation to the aforesaid grounds of appeal, are as under:*

### **RE : Ground of Appeal 1 - Disallowance of 2/3<sup>rd</sup> of Loan Acquisition Cost**

2.3 *During the relevant assessment year, the Assessee claimed Rs. 40,64,43,689 as an expenditure towards loan acquisition cost. However, the assessing officer held that loan acquisition cost is to be spread over a period of three years and accordingly only 1/3<sup>rd</sup> of the loan acquisition cost amounting to Rs. 13,54,81,230 was allowed in the relevant assessment year and the remaining 2/3<sup>rd</sup> of the loan acquisition cost amounting to Rs. 27,09,62,459/- was disallowed.*

2.4 *The said disallowance had been made on the ground that such expenses since have direct bearing in relation to the loan amounts and the period of loan and as such the expenses ought to be spread over for the period of three years.*

2.5 *In this regard, it is respectfully submitted that in course of its money lending business, the Assessee enters into loan agreements and hire purchase agreements with its customers and incurs cost such as credit verification of the borrower, front end processing fee etc. These costs are booked as loan acquisition costs and, for the purpose of its **books of account**, these expenditures are recognized as expense over the tenor of the loan by applying the Internal Rate of Return ('IRR'), implicit in the agreement on the diminishing balance of the financed amount so as to provide a constant periodic rate of return on the net investment outstanding on the contracts. However, in case, the loan is foreclosed the unamortized portion of the loan acquisition costs, being disclosed as part of loans and advances, is recognized as charge to the profit and loss account at the time of foreclosure. Further, the unamortized part of these expenditure is shown as asset in the balance sheet.*

2.6 *Nevertheless, in its Income tax return, the Assessee claimed the whole amount of Rs. 40,64,43,689, being amount actually incurred during the year and revenue in nature. This practice of claiming the whole of the loan acquisition cost on actual basis has been consistently followed by the Assessee over the years.*

***Inconsistency in taxation of loan processing fees received vis-a-vis allowability of loan acquisition costs:***

- 2.7 *It is respectfully submitted that, during the relevant assessment year, the Assessee earned loan processing fee (income) from its customers, which, as per the accounting policy followed by the company, was treated as income over the period of loan. The proportionate amount, which relates to the period falling beyond the close of the year is treated as deferred income in the books of account and is recognised as income over the period of loan.*
- 2.8 *However, it was wholly and completely offered to tax in the year of receipt. Thus, the Assessee has suo motu offered for tax the additional amount of Rs. 28,21,09,090/-, which was deferred in the books of account and not even credited to its Profit and Loss account.*
- 2.9 *It is submitted that though the assessing officer accepted taxability of the whole of loan processing fees (income) on upfront basis, however, corresponding loan acquisition costs were proposed to be allowed on a deferred basis over a period of 3 years.*
- 2.10 *It is submitted that, in case the assessing officer accepted the tax treatment for loan processing fees, then a different view could not be taken for allowability of the loan acquisition costs.*

***Issue is squarely covered in favour of Assessee by the order of Hon'ble ITAT, in earlier years:***

- 2.11 *In appeal, pertaining to AY 2003-04, AY 2004-05 and AY 2005-06, the Hon'ble Tribunal deleted the addition made by the assessing officer on account of loan acquisition costs, and inter alia observed under:*

*"29. We have heard both the parties and gone through the facts of the case. Indisputably, the assessee offered loan processing fees (Income) for tax and claimed loan acquisition costs as expense in the year of accrual in accordance until, a practice being consistently followed by the assessee over the years and never questioned by the Revenue. However, the AO did not accept the submissions of the assessee in the light of decision of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Limited (supra). On appeal, the Id. CIT(A) allowed the claim on the ground that the AO could not take a different stand relating to income and expenditure on the same issue and the treatment in books of accounts does not govern the tax treatment, which is governed by the provisions of the Act. As already observed by us in para 25 to*

*25.7 while adjudicating ground no.3 in the appeal of the Revenue for the AY 2003-04 and ground no.7 in their appeal for the AY 2005-06, the concept of deferred revenue expenditure is essentially an accounting concept and alien to the Act. The relevant provisions of the Act recognise only capital or revenue expenditure. Indisputably, the amount claimed by the assessee in these three assessment years is revenue in nature. Deferred revenue expenditure denotes expenditure for which a payment has been made*

*or a liability incurred, which is essentially revenue in nature but which for various reasons like quantum and period of expected future benefit etc., is written-off over a period of time e.g. expenditure on advertisement, sales promotion etc.. There is no material before us to infer that the aforesaid expenditure resulted in creation of any capital asset, tangible or intangible, and thus, the question of treating the same as capital expenditure does not arise. In fact, the Hon'ble Supreme Court itself in Madras Industrial Investment Corporation Limited (supra) while discussing the issue, in the said case, and distinguishing between various situations observed that*

*"ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years".*

*29.1. In view of detailed reasons given in para 25 to 25.7 above, especially when the Revenue have not brought to our notice any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the Id. CIT(A). Therefore, ground no. 4 in the appeal of the Revenue for the A Y 2003-04 and ground no.3 in their appeals for the AYs 2004-05 and 2005-06, are dismissed."*

*2.12 It is submitted that no appeal was filed before the High Court against the said order of the Hon'ble ITAT.*

*2.13 Later, for AY 2006-07, similar disallowance were made by the assessing officer, which were deleted by the CIT(A) as well as the Hon'ble ITAT following its own order for the AYs 2003-04 to 2005-06.*

*Copy of the order of Tribunal for the AY 2006-07 is placed at Pg. 83 to 113 of Case law Compilation.*

*2.14 The appeal filed by the Revenue against the said order of the Hon'ble ITAT, was dismissed by the Hon'ble High Court of Delhi. (See Pages 79 - 82 of Case law Compilation).*

*2.15 Similarly, for the AYs 2007-08 and 2008-09, the Hon'ble ITAT held that the disallowance made by the assessing officer were untenable, following its own orders for earlier AYs. Similarly, the appeal against the said order of the Hon'ble ITAT were dismissed by the Hon'ble High Court of Delhi.*

*2.16 Recently, Revenue's appeal for AY 2009-10 was also dismissed by the Hon'ble ITAT vide its order dated May 23, 2019, following its own order for AY 2003-04 to AY 2005- 06.*

*2.17 To summarise, the aforesaid issue stands settled by the orders of Hon'ble ITAT as well as Hon'ble High Court of Delhi in Assessee's own case, as is tabulated below for ready reference:*

Assessment Year	Order of Tribunal		Order of High Court	
	Page of Case law Compilation	Para(s)	Page of Case law Compilation	Para
2003-04 to 2005-06	155 -159	26-29	No appeal filed	
2006-07	92-94	15-18	81	5
2007-08 & 2008-09	50-54	22-25	21	3-5
2009-10	5-9	7-9		

2.18 Attention of Hon'ble Bench is also invited towards the recent decision of the Hon'ble Supreme Court in the case of *Taparia Tools Ltd. vs. Joint Commissioner of Income-tax: [2015] 55 taxmann.com 361 (SC)*, wherein the Hon'ble Court observed as under:

"27. Thus, the first thing which is to be noticed is that though the entire expenditure was incurred in that year, it was the assessee who wanted the spread over. The Court was conscious of the principle that normally revenue expenditure is to be allowed in the same year in which it is incurred, but at the instance of the assessee, who wanted spreading over, the Court agreed to allow the assessee that benefit when it was found that there was a continuing benefit to the business of the company over the entire period.

18. What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the IT Department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied, which upto now has been restricted to the cases of debentures.

19. *In the instant case, as noticed above, the assessee did not want spread over of this expenditure over a period of five years as in the return filed by it, it had claimed the entire interest paid upfront as deductible expenditure in the same year. In such a situation, when this course of action was permissible in law to the assessee as it was in consonance with the provisions of the Act which permit the assessee to claim the expenditure in the year in which it was incurred, merely because a different treatment was given in the books of account cannot be a factor which would deprive the assessee from claiming the entire expenditure as a deduction.* It has been held repeatedly by this Court that entries in the books of account are not determinative or conclusive and the matter is to be examined on the touchstone of

provisions contained in the Act [See - *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82ITR 363 (SC); *Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT* [1997] 227ITR 172/93 *Taxman* 502 (SC); *Sutlej Cotton Mills Ltd. v. CIT* [1979] 116 ITR 1 (SC) and *United Commercial Bank v. CIT* [1999] 240 ITR 355/106 *Taxman* 601 (SC).

20. At the most, an inference can be drawn that by showing this expenditure in a spread over manner in the books of account, the assessee had initially intended to make such an option. However, it abandoned the same before reaching the crucial stage, inasmuch as, in the income tax return filed by the assessee, it chose to claim the entire expenditure in the year in which it was spent/paid by invoking the provisions of Section 36(l)(iii) of the Act. Once a return in that manner was filed, the AO was bound to carry out the assessment by applying the provisions of that Act and not to go beyond the said return. There is no estoppel against the Statute and the Act enables and entitles the assessee to claim the entire expenditure in the manner it is claimed."

(emphasis supplied)

**RE : Ground of Appeal 2 - Disallowance of 4/5<sup>th</sup> of Expenses in relation to non-convertible debentures and commercial papers**

2.19 The next issue, as is stated in ground No. 2 of Grounds of appeal pertains to deletion of disallowance of Rs. 9,59,60,937, which represents 4/5<sup>th</sup> of NCD and commercial paper issue expenses.

2.20. It is submitted that Assessee claimed an amount of Rs. 11,99,51,171, being amount actually incurred during the relevant previous year on raising loan through commercial papers and debentures during the year.

- Non Convertible Debentures ('NCDs'): Assessee issued NCDs to fund its financing activities. NCDs are debentures that are not convertible into equity shares of the company but are redeemable in cash on maturity.
- Commercial Papers ('CPs'): Assessee issued CPs to finance its short-term financing needs. CPs are financial instruments that have a **maximum maturity of one year**.

2.21 The NCD and CP issue expenses include the following expenditure:

- Payment of stamp duty payable as per the Indian Stamp Act on issue of NCDs and CPs.
- Payment made to credit rating agencies for credit verifications.
- Payment made to the managers and bankers to the issue
- Payment made to the underwriters of the issue

2.22. The assessing officer allowed 1/5<sup>th</sup> of the expenses out of aggregate expenditure incurred of Rs. 11,99,51,171, which had been held as allowable but in succeeding four assessment years.

***Issue is squarely covered in favour of Assessee by the order of Hon'ble ITAT, in earlier years:***

2.23. In appeal, pertaining to AY 2003-04 and AY 2005-06, the Hon'ble Tribunal deleted the addition made by the assessing officer on account of loan acquisition costs, and *inter alia* observed under:

"25. We have heard both the parties and gone through the facts of the case. Indisputably, the aforesaid amount relates to expenditure in connection with the issue of non convertible debentures and commercial paper. The AO treated the same as deferred expenditure while the Id. CIT(A) allowed the claim in the light of decision in *India Cements Ltd. (supra)*. It is well established that the concept of deferred revenue expenditure is essentially an accounting concept and alien to the Act. The relevant provisions of the Act recognise only capital or revenue expenditure. Deferred revenue expenditure denotes expenditure for which a payment has been made or a liability incurred, which is essentially revenue in nature but which for various reasons like quantum and period of expected future benefit etc., is written-off over a period of time e.g. expenditure on advertisement, sales promotion etc.. Though the nature of such expenditure is revenue, keeping in view the fact that the benefits arising therefrom are expected to be derived over a period of time, stretching sometimes over several accounting years, the taxpayers have been amortising the same over the expected time period over which the benefits are likely to accrue therefrom. Accordingly, only a proportion of such expenditure is amortised in the Profit and Loss Account but an appropriate adjustment is made in the computation of income, claiming the entire as allowable revenue expenditure in terms of provisions of section 37(1) of the Act. The expenditure which is treated as deferred revenue in the books almost in all cases comprises of items, the benefits derived wherefrom are ephemeral and transitory in nature in as much as these are incurred as a part of a continuous process and need to be expended in order to generate and increase the brand recall and sustain it in the minds of customers. Whether or not expenditure is of enduring nature, the Hon'ble Supreme Court in the case of *Alembic Chemical Works Co. Ltd. vs. CIT (1989) 177 ITR 377* has itself observed that

"The idea of "once for all" payment and "enduring benefit" are not to be treated as something akin to statutory conditions ; nor are the notions of "capital" or "revenue" a judicial fetish. What is capital expenditure and what is revenue are not eternal verities but must needs be flexible so as to respond to the changing economic realities of business. The expression "asset or advantage of an enduring nature" was evolved to emphasize the element of a sufficient degree of durability appropriate to the context."

25.1 Moreover, the deferred revenue expenditure is essentially revenue in nature and the decision to treat the same as deferred revenue only represents a management decision taken in view of the magnitude of the expenditure involved. For the purpose of allowability of any expenditure under the Act, what is material is the classification between the capital and revenue and the same does not recognise of any concept of deferred revenue expenditure. That is why AO himself allowed the 1/5th of the amount..

*In a number of judgments viz. Amar Raja Batteries Ltd. v. ACIT [(2 004) 91 ITD 280 (Hyd)], JCIT v. Modi Olivetti Ltd. [(2005)4 SOT 859 (Delhi)], ACIT vs. Medicamen Biotech Ltd. [(2005) 1 SOT347 (Delhi)],Hero Honda Motors Ltd. v. Joint Commissioner of Income Tax [(2005) 3 SOT 572 (Delhi)] ;Charak Pharmaceuticals v. JCIT [(2005) 4SOT 393 (Mumbai)],and ACIT vs. Ashima Syntex Ltd.,117 ITD 1(Ahd.)(SB)it has been affirmed that where any expenditure is treated as a deferred revenue expenditure, it presupposes that the concerned expenditure, creating benefit is in the revenue field and is a revenue expenditure, but considering its enduring benefits as well as the fact that it does not result in the creation of any new asset or advantage of enduring nature in the capital field, the same is required to be treated distinctly from capital expenditure. However, where any identifiable capital asset, tangible or intangible comes into existence as a result of the amount expended, the same will have to be treated as a capital expenditure and depreciation allowable thereon as per the prescribed rules and procedures under the Income-tax Act.*

25.2 *In the instant case, there is no material before us to infer that the aforesaid expenditure resulted in creation of any capital asset, tangible or intangible, and thus, the question of treating the same as capital expenditure does not arise. In fact, the Hon'ble Supreme Court itself in Madras Industrial Investment Corporation Limited(supra) while discussing the issue, in the said case, and distinguishing between various situations observed that*

*"ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years".*

25.3 *Another argument by the Id. DR is the variation and dichotomy between the accounting treatment of such expenditure in the books of account and its claim under the Act. As far as the entries in the books of account are concerned, it is well settled that they do not clinch the issue either way, and are not determinative of the allowability or otherwise of the expenditure. The decisions of the Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 and in the case of CIT v. Indian Discounts Co. Ltd. [1970] 75 ITR 191 (SC) are clear on the issue. The accounting entries in the books of accounts are occasioned by a diverse set of considerations and issues such as compliance with statutory laws and mandatory accounting standards/principles and of course management decisions as to the treatment of a particular item which can be guided by considerations of reported profitability earning per share, impact on share prices etc.. The Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. vs. CIT ((1971) 82 ITR 363) (SC) also affirmed the above view by observing that*

*"whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter".*

25.4 Subsequently the Hon'ble Court re-affirmed the said view in *Sutlej Cotton Mills. Ltd. Vs. CIT,116 ITRI(SC)*

*" But it is now well settled that the way in which entries are made by an assessee in his books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. The assessee may, by making entries which are not in conformity with the proper accountancy principles, conceal profit or show loss and the entries made by him cannot, therefore, be regarded as conclusive one way or the other. What is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee.*

25.5 Likewise, in the case of *Tuticorin Alkali Chemicals and Fertilizers Ltd vs. CIT,227 ITR 172(SC)*,Hon'ble Supreme Court held that

*"It is true that this court has very often referred to accounting practice for ascertainment of profit made by a company or value of the assets of a company. But when the question is whether a receipt of money is taxable or not or whether certain deductions from that receipt are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice. Accounting practice cannot override section 56 or any other provision of the Act as was pointed out by Lord Russell in the case of B. S. C. Footwear Ltd. [1970] 77 FIR 857, 860 (CA), the income tax law does not march step by step in the footprints of the accountancy profession."*

25.6 In a later decision in *CIT vs Secure Meters Ltd., (2009 TIOL 93)(SC)*,Hon'ble Apex court taking note of their earlier decision in *India Cements Ltd.(supra)* held that expenditure on loan was allowable as revenue expenditure. The Revenue in this case contended that since the debentures were convertible and on conversion, it would add to the capital of the company, the expenditure should also be construed as capital expenditure. The Hon'ble Supreme Court rejected this contention and held that the debentures were loans and the object of a loan was not relevant. Accordingly, it was concluded that expenses on issue of debentures, whether convertible or not, is allowable as a deduction in computing the income of the assessee.

25.7In view of the foregoing, especially when the Revenue have not brought to our notice any contrary decision nor any other material so as to enable us to take a different view in the matter, we have no hesitation in upholding the findings of the Id. CIT (A). Therefore, ground no.3 in the appeal of the Revenue for the AY 2003-04 and ground no.7 in their appeal for the AY 2005-06 are dismissed."

2.24. Further, the aforesaid ground also stands covered in favour of the Assessee by the orders of the Hon'ble Tribunal and High Court in subsequent assessment years, as is tabulated below:

Assessment Year	Order of Tribunal		Order of High Court	
	Page of case law compilation	Para	Page of case law compilation	Para
2003-04 to 2005-06	149 -155	22 - 25.7	No appeal filed	
2006-07	103 -108	35-40	81	5
2007-08 & 2008-09	43-50	19-21	21	3-5
2009-10	9-13	<b>10-12</b>		

#### **PRAYER**

*In view of aforesaid submission, it is submitted that the order of CIT(A) needs to be affirmed and, the appeal of the Department may kindly be dismissed, or, to pass such other order as your Honors deemed fit in the facts and circumstances of the case so that the cause of justice can be met."*

(4) At the time of hearing before us, at the outset, the Ld. Counsel for assessee submitted that both the issues under dispute, in the present appeal, are covered in favour of the assessee vide orders of Co-ordinate Bench of ITAT, Delhi in assessee's own case and vide order of the Hon'ble Jurisdictional High Court i.e. Hon'ble High Court of Delhi, in assessee's own case for earlier years. For this purpose, he relied on the synopsis filed from assessee's side; relevant portion of which has already been reproduced in preceding paragraph 3.1 of this order. He drew our particular attention to paragraph no. 2.17 and 2.18 of the aforesaid synopsis which containing summary of the orders of the Co-ordinate Benches of ITAT, Delhi and orders of the Hon'ble Delhi High Court in assessee's own case, in which the identical issues have been decided in assessee's

favour. He submitted that the disputed issues in the present appeal should be decided in favour of the assessee and against Revenue, in view of the aforesaid precedents. The Ld. CIT(DR) appearing for Revenue did not dispute the contention of the Ld. Counsel for assessee that both the issues in dispute in the present appeal, are covered in favour of the assessee, by the aforesaid orders of Co-ordinate Benches of ITAT, Delhi and by orders of Hon'ble Delhi High Court. However, the Ld. CIT(DR) relied on the order of the AO. But the Ld. CIT(DR) did not bring any distinguishing facts and circumstances pertaining to the present Assessment Year relevant for the appeal before us (i.e. A.Y. 2010-11) to distinguish it from the Assessment Years in which co-ordinate Benches of ITAT, Delhi and Hon'ble Delhi High Court have decided the identical issues in favour of the assessee.

(5) We have heard both sides. We have carefully perused the materials available on record. We have also considered the judicial precedents brought to our attention. We find that, it is not in dispute that the facts and circumstances of this year are similar to facts and circumstances of the earlier year for which identical issues in dispute have been decided in favour of the assessee and against Revenue, vide orders of Co-ordinate Benches of ITAT, Delhi and orders of Hon'ble Delhi High Court; mention of which has been made in the aforesaid synopsis filed from assessee's side; particularly the paragraph nos. 2.17 and 2.18 of the aforesaid synopsis, containing a summary of orders of Co-ordinate Bench of ITAT, Delhi and Hon'ble Delhi High Court. We have also perused the relevant orders of Co-ordinate Benches of ITAT, Delhi; and Hon'ble High Court of Delhi, listed at Sl. No. 7, 8, 9, 10, 11 and 12 of the table contained in foregoing paragraph (3)

of this order. No distinguishing facts and circumstances have been brought to our attention by the Ld. CIT(DR) to persuade us, to take a view different from a view already taken by aforesaid numerous precedents in favour of the assessee including orders of both Hon'ble Delhi High Court and orders of Co-ordinate Benches of ITAT, Delhi. The Ld. CIT(DR) has brought no materials for us to warrant any interference with the impugned order dated 17.02.2016 of the Ld. CIT(A), wherein she deleted the aforesaid two additions amounting to Rs. 27,09,62,459/- and 9,59,60,937/-. It is not in dispute that identical issues, in similar facts and circumstances have already been decided in earlier years in favour of the assessee, and against Revenue by orders of Co-ordinate Benches of ITAT, Delhi and by orders of Hon'ble Delhi High Court. Therefore, respectfully following the aforesaid orders of the Co-ordinate Benches of ITAT, Delhi in assessee's own case and further respectfully following the aforesaid orders of Hon'ble Delhi High Court; in assessee's own case; as discussed earlier in detail; we decide the disputed issues, in the present appeal also in assessee's favour and against Revenue. All the grounds of appeal are dismissed and accordingly, the appeal filed by Revenue is dismissed.

(6) In the result, appeal filed by Revenue is dismissed.

Order pronounced in the open court on 29/7/2019

**Sd/-**  
**( H.S. SIDHU)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 29.07.2019  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	